IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.555 of 2006

Reserved on 27.9.2007

Date of decision 12.10.2007

Pritam Lal and others Petitioners

Vs.

Financial Commissioner (Appeals)
and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr..Ankush D.Sood, Advocate.

For the respondents: Ms.Meenakshi Sharma, Dy.A.G. for respondent No.1.

Mr.Ajay Sharma, Advocate, for respondents No.2 and 3.

Rajiv Sharma, J.

The brief facts necessary for adjudication of this petition are that respondents No.2 and 3 filed an application for partition before the Assistant Collector Ist Grade, Kangra on 3.6.1993 for partition with respect to land comprised in Khata No.70, Khatauni No.130, Khasra No. 470, measuring 0-17-97 hectares, situated in Mohal and Mauza Rehlu, Tehsil Shahpur, District Kangra. The present petitioners filed objections to the application for partition primarily contending that the partition sought was partial and claimed that as per 'khangi taksim' the khata stood partitioned vide a partition deed dated 8.8.1955. The learned

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[1] Whether reporters of local papers are allowed to see the judgment? No.

Assistant Collector Ist Grade, Kangra after hearing the parties and perusing the documentary evidence rejected the objections filed by the petitioners on 22.8.1998. The petitioners preferred an appeal before the Collector against the order of A.C.Ist Grade, Shahpur. The appeal was rejected by the Collector, Sub Division, Dharamshala, vide order dated 6.8.2001. The petitioners filed a revision petition under Section 17 of the H.P. Land Revenue Act, 1954 against the order dated 6.8.2001 passed by the Sub Divisional Collector, Dharamshala before the Deputy Commissioner-cum-Commissioner, Kangra. They also filed an application under Order 41 Rule 27 CPC for production of additional evidence, whereby Jamabandis for the years 1954-55, 1962-63, 1967-68 and 1972-73 were sought to be placed on record. The Deputy Commissioner-cum-Commissioner, Kangra at Dharamshala accepted the revision on 22.10.2002 and remanded the matter back to the A.C.Ist Grade, Shahpur for afresh disposal. The respondents No.2 and 3 preferred a revision petition against the decision of the Deputy Commissioner-cum-Commissioner before the Financial Commissioner (Appeals). The Financial Commissioner (Appeals) accepted the revision petition on 18.4.2006 and set aside the order of the Commissioner dated 22.10.2002.

Mr.Ankush D.Sood, had strenuously argued that the order dated 18.4.2006 is not sustainable in the eyes of law and prayed for upholding order of Deputy Commissioner-cum-Commissioner dated 22.10.2002. The learned Deputy Advocate General and Mr.Ajay Sharma, Advocate supported the order dated 18.4.2006.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

It is primarily contended by Mr.Ankush D.Sood, before me that the Sub Divisional Collector and A.C.Ist Grade in their orders have failed to take into consideration the true import of the private partition which took

place in the year 1955. As per Section 135 of the H.P. Land Revenue Act, 1954 the private partition is required to be ratified within a period of three years. The petitioners have not placed any document on record suggesting that the partition dated 8.8.1955 was approved/ratified by the Revenue Department as per provisions of Section 135 of the Act. Mr.Sood had drawn attention of this Court to the partition deed dated 8.8.1955. It is evident from reading of the English translation of Ex.P-7 i.e. copy of the partition deed that no Khasra numbers are mentioned in the same and in absence of the same, the document cannot be looked into. Confronted with this situation, Mr.Sood argued that the petitioners have been prevented from leading the oral evidence by the authorities below more particularly when the diet money and list of witnesses was already supplied. This ground has been raised merely to be rejected since when the application under Order 41 Rule 27 CPC seeking to produce on record copies of jamabandis was filed before the Deputy Commissioner it was incumbent on their part to have referred to partition deed as well. If the petitioners had not been permitted to lead the oral evidence at the initial stage, they could do so by incorporating this prayer for placing on record copy of partition deed in the application preferred under Order 41 Rule 27 CPC before the Deputy Commissioner, Dharamshala. The matter can be looked into from another angle. Even if the petitioners had been permitted to bring the witnesses to lead oral evidence, the witnesses could not state why the column with regard to khasra numbers has been left blank. The witnesses could not give the exact description of the land in absence of khasra numbers even as per reading of partition deed dated 8.8.1955. The Court is of the opinion that in the absence of khasra numbers being not incorporated in the partition deed dated 8.8.1955 the same was never intended to be acted upon by the parties.

The Deputy Commissioner as per Section 73 of the H.P. Land Revenue Act, 1954 could recommend the case to the Financial Commissioner only instead of remanding the matter himself back to the A.C.Ist Grade, Shahpur. This was the serious irregularity committed by the Deputy Commissioner-cum-Commissioner, Kangra while allowing the revision petition on 22.10.2002. The Financial Commissioner (Appeals) has come to the right conclusion that the Commissioner had no jurisdiction to remand the matter. The order dated 22.10.2002 was also bad on account of breach of Section 17(3) of the H.P. Land Revenue Act, 1954. The A.C.Ist Grade had come to the right conclusion that there was no question of partial partition and in the absence of the detail of khasra numbers, or place where the land was situated the private partition deed could not be given any credence, more particularly when the same is required to be affirmed within a period of three years. The Collector has rightly upheld the order of A.C.Ist Grade, Kangra after going through the record. He had referred to Jamabandi for the year 1989-90 as well. The Deputy Commissioner-cum-Commissioner had set aside the well reasoned orders passed by the A.C.. Ist Grade, Kangra as well as Collector Sub Division, Dharamshala. The petitioners had not placed any documentary evidence to the effect that they had other land in joint possession, hence their plea that it was a case of partial partition has been rightly rejected by the authorities. The Financial Commissioner by adopting the correct process of reasoning set aside the order passed by the Deputy Commissioner-cum-Commissioner, Mandi dated 22.10.2002. Consequently, it is held that there is neither any jurisdictional error nor procedural irregularity in the order passed by the Financial Commissioner (Appeals) dated 18.4.2006. The writ petition is dismissed with no order as to costs.

October 12, 2007 (g) **(Rajiv Sharma), J.**